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MEMORANDUM

TO: Committee on Legal Services

FROM: Jacob Baus, Office of Legislative Legal Services

DATE: December 10, 2019

SUBJECT: Rules of the Board of Education, concerning Rules for Administration of Early Literacy Grant Program, 1 CCR 301-90 (LLS Docket No. 190458; SOS Tracking No. 2019-00354).¹

Summary of Problems Identified and Recommendations

Section 22-7-1211 (2), C.R.S., requires the Department of Education (department) to consider specific factors when reviewing early literacy grant program (grant) applications and making award recommendations to the Board of Education (board). But the board did not comprehensively include the statutorily required factors in its related rules. **Because the board failed to promulgate rules addressing the statutorily required factors in section 22-7-1211 (2)(a), (2)(b.3), (2)(b.5), and (2)(c.5), C.R.S., we recommend that Rule 6.1 of the rules of the board concerning Rules for Administration of Early Literacy Grant Program not be extended.**

Section 22-7-1213 (2)(a), C.R.S., requires grant award recipients to report to the department detailed information regarding expenditures used by the grant award. But the board reworded the requirement in a manner that creates a conflict between the statute and rule. **Because Rule 7.1 (A) conflicts with the statute, we recommend that**

¹ Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I), C.R.S., the rules discussed in this memorandum will expire on May 15, 2020, unless the General Assembly acts by bill to postpone such expiration.

Rule 7.1 (A) of the rules of the board concerning Rules for Administration of Early Literacy Grant Program not be extended.

Analysis

1. Rule 6.1 conflicts with statute by omitting statutorily required considerations.

The purpose of early literacy program grants is "to provide money to local education providers to implement literacy support and intervention instruction programs, including but not limited to related professional development programs, to assist students in kindergarten and first, second, and third grades to achieve reading competency."² The board has authority to promulgate "[r]ules for implementing the early literacy grant program pursuant to section 22-7-1211."³

The department is required to review grant applications and then recommend award amounts and durations to the board for selection.⁴ In making its recommendations to the board, the department is required to consider specific statutory factors:

22-7-1211. Early literacy grant program - created - definitions. (2) The department shall review each grant application received and recommend to the state board whether to award the grant and the duration and amount of each grant. In making recommendations, **the department shall consider the following factors:**

(a) The percentage of kindergarten and first-, second-, and third-grade students enrolled by the applying local education provider or group of local education providers who have significant reading deficiencies **and the percentage of kindergarten and first-, second-, and third-grade students who do not have significant reading deficiencies but who are not meeting the grade-level expectations in reading adopted by the state board;**

(b) The instructional program that the applying local education provider or group of local education providers plans to implement using the grant money and whether it is an evidence-based program that is proven to be successful in other public schools in Colorado or in other states;

² § 22-7-1211 (1)(a), C.R.S.

³ § 22-7-1209 (1)(f), C.R.S.

⁴ § 22-7-1211 (2) and (3), C.R.S.

(b.3) Whether the local education provider or group of local education providers employs reading coaches or plans to use all or a portion of the grant money to employ reading coaches;

(b.5) The degree to which the instructional program incorporates the effective use of technology, including software, to assist in assessing and monitoring student progress toward reading competency;

(c) The cost of the instructional program that the applying local education provider or group of local education providers plans to implement using the grant moneys;

(c.5) In the case of a board of cooperative services that applies for a grant to provide instructional support in literacy, the number of small rural school districts, the number of kindergarten and first-, second-, and third-grade students enrolled in the small rural school districts, and the resources available to the small rural school districts that will receive instructional support as a result of the grant;

(d) Any additional factors the state board may require by rule. **(Emphases added)**

Rule 6.1 attempts to replicate the statute in part and include additional factors pursuant to its authority in section 22-7-1211 (2)(d), C.R.S.

6.1 In reviewing applications for the Comprehensive and Professional Development Early Literacy Grant to recommend which applicants should receive grant funding and the duration and amount of each grant, the Department shall consider the following criteria:

6.1 (A) The percentage of kindergarten and first-, second-, and third-grade students enrolled in the applying local education provider or group of local education providers who have Significant Reading Deficiencies;

6.1 (B) The use or proposed use of Instructional programming which is aligned to the READ Act and is Evidence-Based or Scientifically-Based;

6.1 (C) The quality of the professional development program(s) that the applicant(s) plan to implement for educators to assist students in kindergarten and first-, second-, and third-grade students to achieve reading competency;

6.1 (D) The plan the applicant has to sustain positive student gains over time;

6.1 (E) The cost of the instructional program that the applicant(s) plan to implement using the grant money; and

6.1 (F) The rigor with which the applicant(s) intend(s) to monitor and evaluate the implementation of the proposed program.

In attempting to replicate the statute in part, Rule 6.1 as a whole omits the department's requirement to consider the second factor specified in section 22-7-1211 (2)(a), C.R.S., *i.e.* the percentage of kindergarten and first-, second-, and third-grade students who do not have significant reading deficiencies but who are not meeting grade-level expectations, and the factors in section 22-7-1211 (2)(b.3), (2)(b.5), and (2)(c.5), C.R.S.

Because Rule 6.1 omits certain statutorily required considerations, Rule 6.1 should not be extended.

2. Rule 7.1 (A) conflicts with statute by not requiring a detailed explanation of grant expenditures.

Section 22-7-1213 (2), C.R.S., requires grant award recipients to report certain information regarding how the award was used and the impact made, including, in relevant part, detailed information about specific expenditures made from the grant award:

22-7-1213. Reporting requirements. (2) Each local education provider that receives an early literacy grant pursuant to section 22-7-1211 or per-pupil intervention money shall, at the conclusion of each budget year in which it receives the grant or per-pupil intervention money, submit to the department information describing:

(a) In detail, the specific expenditures for which the local education provider used the grant or per-pupil intervention money;

(a.5) If the local education provider purchased instructional programming in reading using grant or per-pupil intervention money, the scores attained by students enrolled in kindergarten through third grade on the interim reading assessments administered pursuant to section 22-7-1205;

(b) The number and grade levels of students who participated in each of the types of programs or services provided; and

(c) The progress made by participating students in achieving reading competency. **(Emphases added)**

In contrast, Rule 7.1 (A) states:

7.1 Each local education provider that receives an early literacy grant shall submit information to the Department describing the following:

7.1 (A) The instructional programs or services for which the local education provider used the grant;

7.1 (B) If the local education provider purchased instructional programming in reading using grant money, the scores attained by students enrolled in kindergarten through third grade on the interim reading assessments administered pursuant to section 22-7-1205, C.R.S.;

7.1 (C) The number and grade levels of students who participated in each of the types of programs or services provided;

7.1 (D) The progress made by participating students in achieving reading competency; and

7.1 (E) Any other information required by the Department or the independent evaluator contracted by the Department to complete the evaluation described in section 22-7-1209 (8). The local education provider, in providing the information, and the Department and independent evaluator in receiving and using the information, shall comply with state and federal laws to protect the privacy of student information. The local education provider, the Department and the independent evaluator shall collaborate to minimize the impact on instructional time that may result from collecting and providing the information.

In attempting to replicate the statute, Rule 7.1 (A) requires the grant award recipient to report information regarding instructional programs or services for which the local education provider used the grant. This conflicts with the statutory requirement to report detailed information regarding expenditures used by the grant award, because the rule is not comprehensive enough to capture what is contemplated by statute.

Because Rule 7.1 (A) conflicts with statute, Rule 7.1 (A) should not be extended.

Recommendations

We therefore recommend that Rules 6.1 and 7.1 (A) of the rules of the Board of Education concerning Rules for Administration of Early Literacy Grant Program not be extended because Rule 6.1 conflicts with statute by omitting statutorily required considerations and Rule 7.1 (A) conflicts with statute by not requiring a detailed explanation of grant expenditures.